

1982 WL 189473 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 27, 1982

\*1 Dr. William M. Newberry, Jr.  
Medical University of South Carolina  
171 Ashley Avenue  
Charleston, South Carolina 29425

Dear Dr. Newberry:

The Attorney General has asked that I reply to your letter of October 13, 1982, requesting an interpretation by this Office of the 'Guidelines for Special Contract Services' issued by the State Budget and Control Board's Personnel Division.

As background, the Governor, The General Assembly, and the Budget and Control Board have been concerned for a long time with the increase in State employment; particularly the growth resulting from the permanent employment of persons whose positions were originally funded through federal or other grants. They acquire permanent employee status after six months, even though grant funding may later expire. Nevertheless, there is a definite need in all agencies and institutions to employ persons from time-to-time for special services or projects which are not of a permanent nature. A typical example would be a special research project funded by federal or other non-appropriated funds, which you mention in your letter. The Appropriations Act each year places specific limitations on the number of FTE positions allotted to agencies and institutions, therefore, when a special project or special need arises which cannot be handled by present staff (or by temporary 6-month employees) the use of special contract employees in the best solution, because they acquire no permanent status and do not count against FTE positions.

I have discussed the situation with Mr. Joe Mack of the State Personnel Division and Mr. Bill Putnam, Executive Director of the Budget and Control Board. In our opinion there is no serious ambiguity in the Guidelines.

The problem has arisen because some agencies and institutions, perhaps including MUSC, have interpreted the Guidelines to mean that present permanent employees may also be given special contract status, full-time or part-time. A permanent employee might resign and then make a special employment contract; but this would seem highly unlikely, as the special contract employee has no privileges or fringe benefits and acquires no permanent status, even though his contract employment may be for a longer term than six months.

Further confusion has arisen from the fact that the State Personnel Division originally construed the Guidelines to mean that an agency or institution could not employ a person under special contract if there were persons already on the payroll who had the skills or knowledge to perform the services, overlooking the fact that those persons must be 'available' to perform the special services. But this problem arose because the agency or institution failed to advise the Personnel Division that there were not employees with sufficient time available to perform the additional work.

Perhaps the simplest interpretation would be by citing examples. Special contract employment would be proper to perform a special project funded by federal or other grants, including employment of professional, technical, and clerical personnel, even though the agency has such personnel on its permanent payroll, when present personnel have insufficient time available to perform the special project. A second example is when the agency or institution has no such specially qualified personnel, and a person or persons are needed for a limited time to perform a specific task. This might cover a very broad range of services, from performing studies or conducting special training all the way to employing a team of personnel to develop a new or improved program for the agency. In either example, special contract employees work under the ultimate supervision of officials of the agency who are in charge of the special project or task.

\*2 Finally, some agencies have confused special contract employment with the employment of consultants. Consultants must be retained in accordance with the requirements of the Consolidated Procurement Code. They are independent contractors and are not supervised or controlled by the agency or institution, other than to perform the work defined in the consulting contract.

I trust this discussion has helped clarify the purpose and meaning of the special contract employment Guidelines. Please do not hesitate to call if you have any questions.

Sincerely,

Frank K. Sloan  
Deputy Attorney General

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